

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

RICHARD EDWARD TRICE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

:
:
:
:
:
:
:
:
:
:
:

CASE NO.: 1:92-CR-08-001 (WLS)

ORDER

Before the Court is a Report and Recommendation from United States Magistrate Judge Thomas Q. Langstaff, filed September 13, 2012. (Doc. 102). It is recommended that Petitioner's Motions for New Trial (Docs. 90, 91), Motion for Relief from Judgment (Doc. 94), and Second or Successive Petition (docketed as "Motion for Appointment of Counsel") (Doc. 95) be denied. According to Judge Langstaff, Petitioner's pending motions challenge the substance of Petitioner's 1992 conviction and sentence, and are, in fact, unauthorized 28 U.S.C. § 2255 motions for which the Court is without authority to entertain. (Doc. 102 at 2-3). Furthermore, in light of this recommendation and this Court's dismissal of Petitioner's § 2241 Petition in Case No. 1:12-cv-79-WLS (Doc. 32), Judge Langstaff also recommends that Petitioner's Voluntary Dismissal of Outstanding Motions (Doc. 100) be denied.

On September 26, 2012, Petitioner timely submitted an objection to Judge Langstaff's Recommendation. (Doc. 103). In his objection, Petitioner reiterates his oft-cited contention that

his conviction and sentence must be vacated “in light of the Suprem[e] Court substantive change in the law on predicate offences.” (*Id.* at 2). Petitioner cites to *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) and *Carachuri-Rosendo v. Holder*, 130 S. Ct. 2577 (2010), in support of this assertion. (*Id.*) However, Petitioner has already been informed by both this Court and the Eleventh Circuit that his reliance on *Carachuri-Rosendo* to attack his conviction and/or sentence is misplaced since there is no evidence to date that *Carachuri-Rosendo* was intended by the Supreme Court to apply retroactively. (*See Bey v. Drew*, No. 1:12-cv-79-WLS (Docs. 32, 42-1); *see also In re Richard Trice Bey*, No. 12-10586 (11th Cir. Mar. 1, 2012) (order denying leave to file a second or successive motion)). As for *Simmons*, it is not a Supreme Court decision, so it too would not operate to vacate Petitioner’s conviction and/or sentence. Therefore, notwithstanding the fact that Judge Langstaff is correct in noting that Petitioner has failed to obtain the proper authorization for filing a successive petition, thereby rendering the Court without any authority to consider Petitioner’s motions, Petitioner’s arguments in support of his motions are without merit.

Therefore, upon full review and consideration upon the record, the Court finds that Judge Langstaff’s Report and Recommendation (Doc. 102) should be, and hereby is, **ACCEPTED**, **ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein, together with the findings made, reasons stated, and conclusions reached herein. Accordingly, Petitioner’s Objection (Doc. 103) to Judge Langstaff’s Recommendation is **OVERRULED**. Petitioner’s Motions for New Trial (Docs. 90, 91), Motion for Relief from Judgment (Doc. 94), Second or Successive Petition (docketed as “Motion for Appointment of Counsel”) (Doc. 95), and Voluntary Dismissal of Outstanding Motions (Doc. 100) are **DENIED**.

The Court further **DENIES** Petitioner a certificate of appealability, as Petitioner has not made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

SO ORDERED, this 13th day of November, 2012.

/s/ W. Louis Sands
THE HONORABLE W. LOUIS SANDS,
UNITED STATES DISTRICT COURT